

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

October 15, 2021

In Reply Refer To:

EPA Complaint No. 02R-21-R6

Toby Baker
Executive Director
Texas Commission on Environmental Quality
Post Office Box 13087, MC 109
Austin, TX 78711-3087
toby.baker@tceq.texas.gov

Re: Acceptance of Administrative Complaint

Dear Director Baker:

The U.S. Environmental Protection Agency ("EPA"), External Civil Rights Compliance Office ("ECRCO"), is accepting for investigation an administrative complaint filed against the Texas Commission on Environmental Quality ("TCEQ") that was received by the EPA on August 18, 2021. The complaint alleges that TCEQ discriminated on the basis race in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.*, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7. Specifically, the Complaint and additional supplementary materials provided by the Complainants, allege that TCEQ discriminated against the Black residents of West Port Arthur, Texas on the basis of race through a series of actions taken by TCEQ in its implementation of the Clean Air Act with respect to Oxbow Calcining, LLC ("Oxbow"), including with respect to its oversight of Oxbow and with respect to the Annual Monitoring Network Plan ("AMNP"), issued on July 1, 2021.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15. After careful consideration, ECRCO has determined that the complaint meets the jurisdictional

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requirements stated above. First, the allegation is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, it alleges continuing discriminatory acts, including some which occurred within 180 days of the filing of this complaint. Finally, it alleges discriminatory acts by the TCEQ, which is a recipient of EPA financial assistance.

ECRCO will investigate the following issue:

Whether TCEQ discriminated in violation of Title VI and EPA's regulation at 40 C.F.R. Part 7 by using methods of administering a program, with respect to its oversight of Oxbow Calcining, LLC, with the effect of subjecting individuals to discrimination or defeating or substantially impairing the objectives of the program or activity on the basis of race.

The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the Complainants, and determine next steps utilizing ECRCO's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and ECRCO's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. We invite you to review ECRCO's Case Resolution Manual for a more detailed explanation of ECRCO's complaint resolution process, available at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

ECRCO is providing TCEQ with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of this letter notifying TCEQ of the acceptance of Administrative Complaint 02R-21-R6. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that ECRCO shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, ECRCO will contact TCEQ and the Complainants within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the alternative dispute resolution (ADR)¹ and informal resolution agreement² processes as potential options for resolution of the issue, which ECRCO has accepted for investigation. If TCEQ (and the Complainants with respect to ADR) agrees to engage in either of these potential resolution processes, ECRCO will suspend its formal complaint investigation. In the event that either of these potential resolution processes fails to result in an agreement, ECRCO will notify TCEQ as well as the Complainants

¹ EPA ECRCO's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations between the complainant and recipient, through the use of a professionally trained mediator. *See* U.S. EPA, ECRCO Case Resolution Manual, Section 3.11, at 21 (2017) (available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf).

² Informal Resolution occurs between ECRCO and the recipient. *See* Case Resolution Manual, Section 3.12; https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf; p. 22.

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that ECRCO has resumed its complaint investigation and will issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.³

Please be advised that a copy of the complaint is enclosed, consistent with 40 C.F.R. § 7.120(e). ECRCO is releasing the complaint with appropriate redactions consistent with the Freedom of Information Act (FOIA) and the Privacy Act and will only release identifying information to the extent necessary to comply with 40 C.F.R. Parts 5 and 7.⁴

The EPA regulation prohibits applicants, recipients, and others persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO.

If you have any questions about this letter, please feel free to contact me at (202)564-9649, by email at dorka.lilian@epa.gov, Albert Karmi, Case Manager, by email at karmi.albert@epa.gov, or (202)564-4106, or Jack Pantziris, Case Manager, at pantziris.jack@epa.gov, or (202)564-2466.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosure: Via Email, Redacted Copy of Complaint

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office

David Gray
Deputy Regional Administrator
Deputy Civil Rights Official
US EPA Region 6

James McGuire
Regional Counsel
US EPA Region 6

³ *See* 40 C.F.R. § 7.115(c).

⁴ Freedom of Information Act, 5 U.S.C. § 552(b)(6) and (7)(c) and the Privacy Act of 1974, 5 U.S.C. § 552a.